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## FEDERAL REPRESENTATIVES TO EPA: AMEND CHESAPEAKE BAY RULES UNFAIR TO NEW YORK

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October 14, 2010

WASHINGTON, DC—Today, Senators Charles E. Schumer and Kirsten Gillibrand, along with Congressmen Michael Arcuri, Maurice Hinchey, Christopher Lee, Daniel Maffei, Scott Murphy, Bill Owens and Paul Tonko sent a letter to Administrator Lisa Jackson of the U.S. Environmental Protection Agency (EPA) expressing strong concerns over the requirements that would be placed on New York by the draft Chesapeake Bay Total Maximum Daily Load (TMDL) that EPA recently released.

"We are all strongly committed to the goal of restoring and ensuring the long-term health of the Chesapeake Bay ecosystem," the group wrote. "However, we believe that the draft TMDL allocations released by EPA place unattainable pollution reductions on New York and, if finalized, will jeopardize the economic well-being of communities within New York's Bay Watershed and the agricultural industry on which the entire state relies."

On September 24, EPA released a draft Chesapeake Bay TMDL regulation that would set limits on the amount of nitrogen, phosphorus and sediment pollution discharged into the Chesapeake Bay and its tributaries by various pollution sources. It calls for 25 percent reductions in nitrogen and phosphorus, averaged across the Bay Watershed that encompasses New York, Pennsylvania, West Virginia, Delaware, Maryland, Virginia and the District of Columbia. However, the draft TMDL would require even steeper reductions in nitrogen and phosphorus discharge in New York's portion of the watershed, which includes all or parts of Allegany, Broome, Cayuga, Chemung, Chenango, Cortland, Delaware, Herkimer, Livingston, Madison, Montgomery, Oneida, Onondaga, Ontario, Otsego, Schoharie, Schuyler, Steuben, Tioga, Tompkins, and Yates counties.

New York State and local officials have said that making the reductions proposed by EPA for New York is not possible. Additionally, the New York State Department of Environmental Conservation (NYSDEC) has estimated that implementing the wastewater treatment plant upgrades and agricultural pollution controls programs that EPA's draft TMDL regulations would require, could cost the state and local taxpayers several billion dollars.

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Additional Quotes by Letter Signers:

**Senator Charles E. Schumer** said, "The bottom line is there is a way to clean up the Chesapeake and protect our economy, but the EPA's new proposal isn't it. It would unfairly penalize small business owners, family farmers and local governments who would pass the cost on to taxpayers. Protecting New York's water quality and the Chesapeake Bay is important, but should not be done at the expense of local communities. In tough economic times like these we need to do everything we can to create jobs, not drive them away. The EPA needs to go back to the drawing board and come up with a proposal that strikes the right balance."

**Senator Kristin Gillibrand**, a member of the Senate Environment & Public Works Committee, said, "Under the draft EPA proposal, New York State is bearing the brunt of the regulation and none of the benefits of a clean Chesapeake Bay. In fact, New York communities, farms and businesses have taken enormous steps over the years to improve water quality, but these proposed rules punish New York State. This is simply unfair and needs to change."

**Congressman Michael Arcuri** said, "If the entire Chesapeake Bay watershed had the same water quality that the New York portion of the watershed currently has, the Bay would not be impaired. But rather than using New York's past successes – especially those with farmers to voluntarily adopt prescribed grazing, precision feeding and nutrient management plans – EPA's TMDL seeks to require additional, unattainable reductions that would be punitive to New York's farmers, taxpayers and communities."

**Congressman Maurice Hinchey** said, "I strongly support cleaning up the Chesapeake Bay. It has been a priority of mine for many years. However, the EPA's draft regulations are simply unattainable for New York. The EPA needs to take another look at this and establish a more equitable TMDL re-allocation, and the federal government needs to provide assistance to ensure that cash strapped local communities in NY are not adversely impacted by efforts to revitalize the bay."

**Congressman Chris Lee** said, "The draft EPA regulations will harm local New York economies and our critical agriculture sector. I share my colleagues' commitment to protecting the Chesapeake Bay and echo their concerns with the EPA's policy, which New York State and local officials both say is not feasible."

**Congressman Daniel Maffei** said, "New York has always been progressive in its restoration efforts, and we should not be punished for it. It is tremendously important to proceed with efforts to ensure the health of the Chesapeake Bay ecosystem; but New York's farmers should not be forced to bear a disproportionate burden of these unfair allocations."

**Congressman Scott Murphy** said, "Perhaps no state has been more committed to protecting its water supply than New York, which is why we have some of the cleanest water in the Chesapeake watershed. While we remain committed to doing our part to clean the Chesapeake, a successful strategy will require EPA to work with us to develop reasonable standards, that are not only fair to New York farmers and businesses, but also recognize our history of strong commitment to environmental protection."

**Congressman Bill Owens** said, "It is critical that the EPA take into account New York's record of success and leadership on water quality issues. We all support the goal of revitalizing the Chesapeake Bay, but we must do so in a way that is fair to local communities and family farmers. It is my hope that the EPA will exercise common sense in the regulatory process."

**Congressman Paul Tonko** said, "I support the goal of improving and revitalizing the Chesapeake Bay ecosystem, and I commend the EPA for continuing to make that goal a priority. But the recommendations in the draft TDML would place an unfair burden on New York State and the small communities in the watershed. I join my colleagues in asking the EPA to work on a more equitable solution."

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Text of the letter sent to EPA Administrator Jackson is below:

Dear Administrator Jackson:

We write today to share our grave concerns with the draft Chesapeake Bay Total Maximum Daily Load (TMDL) allocations that were recently issued by the Environmental Protection Agency (EPA). We are all strongly committed to the goal of restoring and ensuring the long-term health of the Chesapeake Bay ecosystem. The Bay and its tributaries are national treasures that are suffering from desperately poor conditions and in need of significant restoration and protection. However, we believe that the draft TMDL allocations released by EPA will not achieve the goal of cleaning up the Bay because they place unattainable pollution reductions on New York and other headwater states, according to state and local officials. In addition, the drastic reductions that would be required to attain these draft allocations, if finalized, will jeopardize the economic well-being of communities within New York's Bay Watershed and the agricultural industry on which the entire state relies.

New York is an important partner in achieving a healthy and restored Chesapeake Bay. Approximately ten percent of the total Bay watershed lies in New York, including its northern-most headwaters, the Susquehanna and Chemung River systems. New York has made significant improvements in water quality since the mid-1980s. Our state's water quality, in terms of per acre loads of nitrogen and phosphorous, far surpasses that of any other jurisdiction within the Bay watershed – both when measured at the edge of the stream in New York and as load actually delivered to the Bay. New York's current edge of stream load is 6.06 pounds of nitrogen and less than half a pound of phosphorous per acre per year.

This exemplary water quality is no coincidence. It flows from a strong commitment by the state's agencies to enforcing some of the strongest environmental protections in the nation and the widespread, voluntary adoption of responsible agricultural practices by New York's farmers. Unlike EPA's national minimum standards, New York's regulation of stormwater discharges from construction activity requires a broad range of post-construction water quality and quantity controls on nearly all sites over one acre. New York has also been working with its farmers to implement a practical, programmatic, state-wide approach to nutrient and sediment reduction since 2004. As part of this effort, many local farmers have already adopted best management practices (BMPs) and certified nutrient management plans to eliminate the use of excess nutrients in their operations. In addition, farmers across the state, working with Cornell Cooperative Extension and local conservation districts, have begun employing prescribed grazing and precision feeding practices, which further reduce nitrogen and phosphorus pollution within the Bay watershed.

According to the draft TMDL, of the seven watershed jurisdiction partners (the six states plus the District of Columbia), none of the draft Phase I Watershed Implementation Plans (WIPs) submitted by non-tidal jurisdictions could meet EPA's nitrogen and phosphorus allocations. This result might have been avoided, had EPA retained the principle for allocating load caps to jurisdictions that stated: "States that benefit most from the Chesapeake Bay recovery must do more." This principle was included in EPA's formal 2003 Allocation Document, but was later removed from the allocation methodology without prior notice or explanation.

Instead of requiring greater reductions by jurisdictions that will realize greater benefits from a restored Bay, the draft TMDL requires New York to reduce its total phosphorus load by more than 34% of EPA's calculated 2009 baseline, while Maryland,

a tidal state, is required to reduce its phosphorus load by only 18.89%. Even if Maryland is successful in making these reductions by 2025, its per acre, per year delivered load of nitrogen will still be greater than New York's current edge of stream measurements – and only slightly less than New York's current average edge of stream load for phosphorous, according to EPA's own analysis. In fact, if the water quality of the entire Bay watershed had the same phosphorus, nitrogen, and sediment concentrations that New York's portion of the watershed currently has, then the Bay would not be impaired.

The inequity and limitation of the draft TMDL allocations is further compounded by the geography of New York's portion of the watershed and already high water quality. The vast majority, more than seventy-five percent, of the Bay watershed in New York is forested; twenty-one percent is agricultural; and only three percent is classified as urban or suburban. EPA has indicated that it will use federal backstop authorities to require further reductions by states, like New York, that submitted a Phase I WIP that did not meet their pollutant allocations under the TMDL. However, because of New York's geography, these federal backstop measures will fall disproportionately on agricultural resources within New York. In fact, the draft TMDL proposes to require additional reductions from New York agricultural nonpoint sources necessary to meet nitrogen, phosphorus and sediment allocations and also proposes to apply Concentrated Animal Feeding Operations (CAFO) standards to AFOs not subject to CAFO permits. New York's already high water quality means these further improvements will have significantly higher marginal cost than additional improvements in other states, specifically in tidal states that have not already implemented agricultural BMPs. In contrast, placing these additional costs on New York farmers, as the draft TMDL proposes to do, would not only be unjust, but a death knell to scores of New York farms.

Throughout the development of the draft TMDL, New York has remained a good faith participant, despite raising these and other objections. New York identified large erroneous assumptions within the EPA model that assumed too high a rate of nitrogen fertilization on hay land and provided the Bay program with more accurate figures for New York fertilization (80 instead of 200 pounds per acre). Unfortunately, EPA responded by lowering New York's 2009 baseline delivered nitrogen load, instead of crediting New York toward achieving its allocations.

We commend EPA for taking serious actions to restore the health and vitality of the Chesapeake Bay and we support this ultimate goal. However, we fear that as issued, the draft TMDL has absolutely no chance of success because it is inequitable, unattainable and threatens to be punitive to New York's economy, residents and communities. If the final TMDL is to succeed in achieving actual restoration of the Bay, all watershed jurisdictions partners must be fully invested. In order for that to happen, the TMDL load allocations must not only be theoretically attainable for all jurisdictions, but they must appear equitable and just to all parties. The allocations contained in the draft TMDL issued by EPA are neither. For all of these reasons, we strongly urge you to amend the draft allocations to require greater reductions by the tidal states that will benefit the most from the improved health of the Bay, and to those jurisdictions that currently contribute the highest amount of annual, per acre, pollutant load to the Bay.

We thank you for your consideration of this request and look forward to working with you on this important matter.

Sincerely,